

Teleconference

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HONEYWELL INTERNATIONAL, INC., and )  
HONEYWELL INTELLECTUAL PROPERTIES, )  
INC., )  
Plaintiffs, ) Civil Action No.  
v. ) 04-1337-KAJ  
AUDIOVOX COMMUNICATIONS CORP., )  
AUDIOVOX ELECTRONICS CORPORATION, )  
NIKON CORPORATION; NIKON, INC., )  
NOKIA CORPORATION; NOKIA, INC., )  
SANYO ELECTRIC CO., LTD., and )  
SANYO NORTH AMERICA CORPORATION, )  
Defendants. )

-----  
HONEYWELL INTERNATIONAL, INC., and )  
HONEYWELL INTELLECTUAL PROPERTIES, )  
INC., )  
Plaintiffs, ) Civil Action No.  
v. ) 04-1338-KAJ  
APPLE COMPUTER, INC.; ARGUS A/K/A )  
HARTFORD COMPUTER GROUP, INC.; )  
CASIO COMPUTER CO., LTD; CASIO, )  
INC.; CONCORD CAMERAS; DELL INC.; )  
EASTMAN KODAK COMPANY; FUJI PHOTO )  
FILM CO., LTD.; FUJI PHOTO FILM )  
U.S.A., INC.; FUJITSU LIMITED; )  
FUJITSU AMERICA, INC.; FUJITSU )  
COMPUTER PRODUCTS OF AMERICA, INC.; )

CORBETT & WILCOX  
Registered Professional Reporters  
230 North Market Street Wilmington, DE 19899  
(302) 571-0510  
Corbett & Wilcox is not affiliated  
with Wilcox & Fetzer, Court Reporters

## Teleconference

Page 2

1 KYOCERA WIRELESS CORP.; MATSUSHITA )  
 ELECTRICAL INDUSTRIAL CO.; )  
 2 MATSUSHITA ELECTRICAL CORPORATION )  
 OF AMERICA; NAVMAN NZ LIMITED; )  
 3 NAVMAN U.S.A. INC.; OLYMPUS )  
 CORPORATION; OLYMPUS AMERICA, INC.; )  
 4 PENTAX CORPORATION; PENTAX U.S.A., )  
 INC.; SONY CORPORATION; SONY )  
 5 CORPORATION OF AMERICA; SONY )  
 ERICSSON MOBILE COMMUNICATIONS AB; )  
 6 SONY ERICSSON MOBILE COMMUNICATIONS )  
 (USA) INC.; TOSHIBA CORPORATION; )  
 7 and TOSHIBA AMERICA, INC., )  
 )  
 8 Defendants. )  
 -----

9  
 10 OPTREX AMERICA, INC., )  
 )  
 Plaintiff, ) Civil Action No.  
 11 ) 04-1536-KAJ  
 v. )  
 12 )  
 HONEYWELL INTERNATIONAL, INC., and )  
 13 HONEYWELL INTELLECTUAL PROPERTIES, )  
 INC., )  
 14 )  
 Defendant. )

15  
 16 Teleconference in the above matter taken  
 pursuant to notice before Renee A. Meyers, Certified  
 17 Realtime Reporter and Notary Public, in the law offices  
 of Blank Rome, LLP, 1201 North Market Street, Wilmington,  
 Delaware, on Tuesday, August 19, 2008, beginning at  
 18 approximately 9:30 a.m., there being present:

19 BEFORE: THE HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

20 APPEARANCES:

21  
 22 THOMAS C. GRIMM, ESQ.  
 MORRIS NICHOLS ARSHT & TUNNELL LLP  
 1201 North Market Street  
 23 Wilmington, Delaware 19801  
 for Honeywell  
 24

Teleconference

Page 3

1 APPEARANCES (Continued):

2

THOMAS L. HALKOWSKI, ESQ.  
FISH & RICHARDSON, P.C.  
919 N. Market Street, Suite 1100  
Wilmington, Delaware 19801  
for Apple Computer, Inc.

5

AMY EVANS, ESQ.  
CROSS & SIMON, LLC  
913 North Market Street, 11th Floor  
Wilmington, Delaware 19801  
for Hartford Computer Group

8

FRANCIS DI GIOVANNI, ESQ.  
CONNOLLY BOVE LODGE & HUTZ LLP  
1007 North Orange Street  
Wilmington, Delaware 19801  
for Sony Ericcson Mobile Communications AB  
and Sony Ericcson Mobile Communications USA,  
Inc., and Navman

12

DONALD McPHAIL, ESQ.  
DUANE MORRIS, LLP  
505 9th Street, Suite 1000  
Washington, D.C. 20006  
for Audiovox Communications

15

AIMEE CZACHOROWSKI, ESQ.  
DUANE MORRIS, LLP  
1100 North Market Street, Suite 1200  
Wilmington, DE 19801  
for Audiovox Communications

18

CHAD M. SHANDLER, ESQ.  
RICHARDS, LAYTON & FINGER  
One Rodney Square  
Wilmington, Delaware 19801  
for Eastman Kodak

21

RICHARD L. HORWITZ, ESQ.  
POTTER ANDERSON & CORROON  
1313 North Market Street  
Wilmington, Delaware 19801  
for Dell and Nikon

24

Teleconference

Page 4

1 MONTE T. SQUIRE, ESQ.

2 YOUNG CONAWAY STARGATT & TAYLOR

3 1000 West Street, 17th Floor

4 Wilmington, Delaware 19801

5 for Sony and Olympus Corp. and Olympus  
6 America, Inc.

7 KAREN L. PASCALE, ESQ.

8 YOUNG CONAWAY STARGATT & TAYLOR

9 1000 West Street, 17th Floor

10 Wilmington, Delaware 19801

11 for Optrex America

12 ADAM POFF, ESQ.

13 YOUNG CONAWAY STARGATT & TAYLOR

14 1000 West Street, 17th Floor

15 Wilmington, Delaware 19801

16 for Pentax

17 DAVID J. MARGULES, ESQ.

18 BOUCHARD MARGULES & FRIEDLANDER, P.A.

19 222 Delaware Avenue, Suite 1400

20 Wilmington, Delaware 19801

21 for Citizen

22

23

24

Teleconference

Page 5

1 SPECIAL MASTER POPPITI: Counsel, I am  
2 sorry, we are going to have to go back through just to  
3 make sure that we have the appropriate record on who is  
4 attending.

5 Let's start with Honeywell.

6 MR. GRIMM: Tom Grimm at Morris, Nichols  
7 for Honeywell.

8 SPECIAL MASTER POPPITI: Thank you.

9 MR. HALKOWSKI: Tom Halkowski at Fish &  
10 Richardson on behalf of Apple.

11 MR. SQUIRE: Monte Squire from Young,  
12 Conaway on behalf of Sony and Olympus.

13 MS. PASCALE: Karen Pascale, also from  
14 Young, Conaway, on behalf of Optrex America.

15 MS. ZACHAROWSKI: Amy Zacharowski and  
16 Don McVail of Duane Morris for Audiovox Communications  
17 Corporation.

18 MR. HORWITZ: Rich Horwitz from Potter  
19 Anderson for Dell and Nikon.

20 MR. SHANDLER: Chad Shandler from  
21 Richards, Layton & Finger for Eastman Kodak.

22 MR. POFF: Adam Poff from Young, Conaway  
23 for Pentax.

24 MR. MARGULES: David Margules, Bouchard

Teleconference

Page 6

1 Margules & Friedlander, for Citizen.

2 MR. DI GIOVANNI: Frank Di Giovanni from  
3 Connolly Bove for the Sony Ericcson defendants and also  
4 today for Navman.

5 MS. EVANS: This is Amy Evans from Cross  
6 & Simon for Hartford Computer Group.

7 SPECIAL MASTER POPPITI: And I think  
8 that rounds out everyone.

9 Let me just make an observation or  
10 several observations for the record. This request to get  
11 everyone on the line was precipitated by Mr. Grimm's  
12 correspondence of yesterday requesting something that I  
13 am not sure is provided for by the Rules, but, in any  
14 event, requesting that I reconsider the finding and  
15 recommendation that I issued on August the 15th in  
16 several respects. And it's not important, I think for  
17 purposes of this call, to outline what they are. They  
18 are found in Mr. Grimm's letter of August the 18th.

19 The reason why I thought it was  
20 important to get everyone on the line right away was  
21 because, as I suggested to you in my e-mail asking you  
22 all to do me the courtesy of participating, was to  
23 obviate the practice that is required by the Rule and  
24 required by Judge Farnan's order of August the 15th where

## Teleconference

Page 7

1 he entered the proposed order, or signed the proposed  
2 order that I entered on August the 13th shortening the  
3 time frame within which to file Rule 53(g)(2)  
4 applications.

5 And I thought that even though the Rule  
6 doesn't contemplate applications to reconsider, that it  
7 makes, from my perspective, and I would anticipate from  
8 Judge Farnan's perspective, and I hope from your  
9 perspective, it makes some sense to revisit the process,  
10 if you will, consider tolling the time within which an  
11 application under Rule 53(g)(2) has to be filed even with  
12 Judge Farnan's signature on the order.

13 If I could get everyone to focus on a  
14 couple things that Mr. Grimm raised, one, of course,  
15 being the determination that I made that the burden of  
16 persuasion where there is an identification of a license  
17 and if the motion to dismiss is grounded on that license  
18 where the customers are claiming that they are either  
19 covered directly by the license, but I believe are  
20 covered, I think the claim is they are covered by virtue  
21 of third-party beneficiary under those licenses, that it  
22 becomes their responsibility to identify the license and  
23 the fact that they are an entity that is covered, and I  
24 determined that it was the responsibility of Honeywell to

## Teleconference

Page 8

1 carry the burden forward to say, No, you are outside the  
2 scope.

3 Honeywell, on the other hand, has  
4 suggested that the theory that the customer defendants  
5 should be focused on is the theory of patent exhaustion,  
6 and without getting into a discussion as to what patent  
7 exhaustion may be in the context of this case or these  
8 cases or these entities, it seems to me that the record  
9 that presently exists on either the claim of the customer  
10 defendants, that they are covered by the license, or if  
11 they were to be claiming patent exhaustion, I am not  
12 confident the record is full for purposes of joining,  
13 briefing, arguing, and having me make a determination on  
14 filings, namely, motions to dismiss.

15 From Honeywell's perspective, Mr. Grimm,  
16 I know you will correct me if I am not capturing this  
17 correctly, from Honeywell's perspective, Honeywell is  
18 saying, We need discovery, we haven't had discovery on  
19 issues that bear either on licensure or that bear on  
20 patent exhaustion up to this point because, quite  
21 frankly, everything was stayed with respect to the  
22 customer defendant, and in order for us to meet any  
23 application that gets filed, we are going to need that  
24 discovery.



## Teleconference

Page 9

1 I don't know what the customer  
2 defendants' view of that assertion is, and I just want to  
3 make sure that I create a very brief process within which  
4 we can focus on Honeywell's position as stated in the  
5 August 18th correspondence to me and get this thing  
6 moving forward.

7 If it includes, or if it should include  
8 some opportunity to discover, more discovery either of  
9 the customer defendants with respect to the licensing  
10 issue or the patent exhaustion issue, or if it should  
11 include third-party discovery as I had permitted, but  
12 certainly the time frame is one that Honeywell rightly  
13 questioned, what should these time frames look like?

14 That's kind of the backdrop as I  
15 approach today's conversations, knowing that everyone has  
16 not had an opportunity to respond to Honeywell's  
17 August 18th correspondence.

18 Mr. Grimm, did I capture what I think  
19 you were saying in your correspondence? And perhaps I  
20 have said too much.

21 MR. GRIMM: No. I think you did very  
22 well, Your Honor. The burden of proof is obviously a  
23 fundamental issue, but rather than avail ourselves of our  
24 right to appeal to Judge Farnan, which we know would hold

## Teleconference

Page 10

1 up the process, we thought it made sense to come back and  
2 say, Why not leave that issue open, reserve the parties'  
3 ability to further brief it in connection with the motion  
4 to dismiss, which is, frankly, the typical situation  
5 litigants find themselves in.

6 They don't typically have the  
7 opportunity of getting a judge to tell them in advance  
8 who has the burden of proof and then go out and take the  
9 discovery. Usually they take the discovery, they make  
10 their motion, and then they are arguing about who has the  
11 burden of proof.

12 So we thought, in this instance, it made  
13 a lot of sense to do that rather than for us to go to  
14 Judge Farnan now, knowing that if we did not go to Judge  
15 Farnan now, we could very well be met with an argument  
16 that your ruling has become law of the case and we have  
17 waived any right to appeal it later after the motion to  
18 dismiss is heard.

19 So we just felt that it was a prudent  
20 and efficient way to go, even though, as Your Honor has  
21 said, there isn't anything clearly stated in the Rules  
22 that permits a reconsideration.

23 SPECIAL MASTER POPPITI: Right. Let's  
24 focus on that piece for a moment, and I certainly want to

## Teleconference

Page 11

1 hear from any, hopefully not all of you, from the  
2 customer defendants' side.

3 I am inclined to see that that is the  
4 best approach rather than leaving everything as is, that  
5 is, status quo, and expecting that one or all of you will  
6 launch whatever you think is appropriate to put something  
7 on Judge Farnan's desk.

8 I am not sure that that is the most  
9 efficient way to move the defendants and Honeywell  
10 forward on the customer defendants' view that they should  
11 be out of this case or they should have been out of this  
12 case some time ago.

13 Focus, then, for me first on the concept  
14 of kind of putting this thing on ice for a bit and focus  
15 on the burden of proof issue. Who is going to speak?  
16 Tom Halkowski, do you want to speak for everyone?

17 MR. HALKOWSKI: I certainly don't  
18 pretend to speak on behalf of others. I do certainly  
19 have a view on this. Really, it's not a strong view one  
20 way or the other. We do have some abbreviated  
21 guidelines -- not guidelines, instructions in terms of  
22 how one is to raise things to Judge Farnan, but I don't  
23 think there would be much of a delay for this small legal  
24 issue to bounce up to him and have him confirm or modify

## Teleconference

Page 12

1 it. I don't see it as being a very big deal.

2 On the other hand, the suggestion made  
3 by Honeywell of just rolling this issue into the briefing  
4 that's going to be coming up soon is fine as well. I  
5 don't have, like I said, a big problem with that either  
6 way.

7 What I do have a much bigger problem  
8 with is the motion of extending things out yet again for  
9 several months. And I am sure we will get to those  
10 issues in a moment, but on this one, I think, either way,  
11 it's going to be dealt with relatively quickly either,  
12 you know, a matter of days of getting some submissions  
13 into Judge Farnan and having him confirm or modify, or we  
14 just, you know, put that off and make it clear that  
15 Honeywell continues to have an opportunity to raise that  
16 issue in the upcoming briefing that we will be submitting  
17 in a couple weeks.

18 Either way, it's going to get wrapped  
19 up, in my view, within a few weeks.

20 SPECIAL MASTER POPPITI: The only  
21 observation I would make about calling the finding and  
22 recommendation, if you will, final for purposes of having  
23 the time frame ultimately run for all of you to determine  
24 whether you want to file applications taking exception to

## Teleconference

Page 13

1 the findings and recommendation, you all know, as members  
2 of the local Bar, that, from my desk, I can do something  
3 that I at least try to do in most instances, and, that  
4 is, say, Okay, I have got a matter before me, this is  
5 going to be an argument date, and I intend to commit to a  
6 certain date, or thereabouts, and you are going to have a  
7 document bringing the matter to closure from my desk.

8 That's something that I just think is  
9 important as part of my responsibility to the Court and  
10 to all of you.

11 The Court usually doesn't take that  
12 approach to work that the Court has for a host of  
13 different reasons, not the least of which is, of course,  
14 the Court's Docket is jam packed, as you all know.

15 So even if you put something on Judge  
16 Farnan's desk that is clear and brief and to the point,  
17 and I will even go so far as to say, the matter that is  
18 simply joined, that doesn't mean that it's going to go to  
19 the top of the pile for purposes of getting a quick  
20 turnaround.

21 So, I guess that's a gentle way of  
22 saying that, in my communications with, particularly with  
23 Judge Farnan over the years, I have never had a  
24 conversation with him to say, You know, Judge Farnan,

Teleconference

Page 14

1 everyone would really like to see a decision from your  
2 desk within a week or ten days.

3 I don't know if you want me to have that  
4 conversation with him. I know I wouldn't want to.

5 MR. HALKOWSKI: No, I appreciate that.  
6 Nonetheless, I do feel as if this issue, in my view, at  
7 least, would likely be addressed relatively soon and it's  
8 a relatively narrow issue, but, as I say, I don't have a  
9 strong feeling on it. I am just as happy to go with the  
10 approach of having that issue remain open for further  
11 briefing, you know, consistent with the schedule that we  
12 have laid out. Like I said, I have much stronger  
13 concerns that relate to the, that we actually stick on  
14 that schedule.

15 SPECIAL MASTER POPPITI: Let's do this:  
16 Does anyone disagree with the approach recommended by  
17 Mr. Grimm with respect to the burden of proof issue and  
18 wrapping it into the briefing schedule on anticipated  
19 motions to dismiss? Does anyone disagree?

20 MR. SQUIRE: Your Honor, this is Monte  
21 Squire for Sony as well as Olympus. I don't necessarily  
22 disagree, but I would like, at least, the opportunity to  
23 confer with my co-counsel on that point and make sure  
24 that they don't have any -- I anticipate that they won't

## Teleconference

Page 15

1 disagree either, but I should have the -- I would like to  
2 have the opportunity to review it with them and somehow  
3 let the Court know after at least having a discussion  
4 with them about it.

5 SPECIAL MASTER POPPITI: I certainly  
6 understand the responsibility that you have to confer  
7 with your co-counsel, and expecting others may be in the  
8 same circumstance, what I'd like to have happen, if you  
9 can, is I'd like that conversation or communication to  
10 occur shortly after we conclude business today, and I'd  
11 like everyone's view that has to do that not later than,  
12 I'd like to even say before close of business today so I  
13 can make sure that things are moving in the appropriate  
14 direction.

15 So, if you can do that before 3:00 p.m.  
16 this afternoon, that would be great.

17 Do any others of you expect that you are  
18 going to be needing that time to say definitely we agree  
19 with Mr. Grimm's approach?

20 MR. HORWITZ: Your Honor, this is Rich  
21 Horwitz on behalf of Dell and Nikon.

22 Mr. Grimm's approach and your  
23 articulation of it are fine for those two defendants.

24 SPECIAL MASTER POPPITI: Okay. Any

Teleconference

Page 16

1 others, please? I will take everyone else's silence to  
2 mean that no one takes exception to Mr. Grimm's approach  
3 and understand that there may be one coming in not later  
4 than 3:00 today.

5 MS. EVANS: Your Honor, this is Amy  
6 Evans from Cross & Simon, and I would get with co-counsel  
7 and get with Your Honor before 3:00 today.

8 SPECIAL MASTER POPPITI: Okay. Thank  
9 you, Ms. Evans.

10 MS. EVANS: Thank you.

11 MR. DI GIOVANNI: Your Honor, it's Frank  
12 Di Giovanni. I would also like to confer with my clients  
13 and return by 3:00.

14 SPECIAL MASTER POPPITI: Thank you,  
15 Mr. Di Giovanni.

16 Let's, then, turn to the other issue  
17 that is raised by Mr. Grimm.

18 MR. GRIMM: The issue regarding  
19 third-party discovery, Your Honor?

20 SPECIAL MASTER POPPITI: Let's do that  
21 one first.

22 MR. GRIMM: Okay. This was just an  
23 issue of practicality that, just from experience, we know  
24 that conducting third-party discovery, even within the



## Teleconference

Page 17

1 United States, in two weeks' time is very difficult, but  
2 to do it with these foreign entities is, as Your Honor, I  
3 am sure, appreciates, next to impossible, even if they  
4 were to cooperate, which they have not to date.

5 As a side note, I would mention, with  
6 respect to the cooperation of the manufacturers, if they  
7 believe that, for example, we certainly believe  
8 Mr. Halkowski's representation that he believes that his  
9 products of Apple are covered by a license; at the same  
10 time, it strikes us as odd that none of these  
11 manufacturer defendants have come forward and said, Leave  
12 my customer alone. They are licensed.

13 And, so, we have not gotten that kind of  
14 cooperation from them to date. And if we were to have to  
15 go through formal discovery procedures through the Hague,  
16 as Your Honor knows, that's a hopelessly long process, so  
17 we hope that it doesn't come to that.

18 SPECIAL MASTER POPPITI: It is, and I  
19 don't want anyone to expect, although I may have left a  
20 number of you, and, more likely, all of you scratching  
21 your heads, saying, What's he thinking? And, quite  
22 frankly, what I was thinking was putting, whether it was  
23 a two-week deadline, three-week deadline, or a four-week  
24 deadline on something like that was really intended to

## Teleconference

Page 18

1 prime the pump to see, No. 1, whether the gates for  
2 cooperation could be completely open, or to simply get  
3 some turnaround back from you saying, This is really the  
4 time frame in which we think we can accomplish this.

5 So, it has a desired effect in one  
6 sense. And what I am looking for is if a third-party  
7 discovery is going to be conducted, and I don't think I  
8 should be saying it is clearly not necessary because it  
9 seems to me it may be critically important, if there are  
10 no voluntary dismissals or if any individual customer  
11 defendant remains standing, it's going to have to occur,  
12 and I just need some sense as to when I should say it is  
13 over.

14 Mr. Grimm.

15 MR. GRIMM: Your Honor, that's very  
16 helpful. And when we put in our suggestion in our letter  
17 to allow for 60 to 90 days, it was with the thought that  
18 within some time period like that, and it can certainly  
19 be shorter than 60 to 90 days, longer, I think, than two  
20 weeks, we were thinking we would know whether or not we  
21 were going to get the cooperation of the discovery we  
22 needed, or whether we, in fact, came back to Your Honor,  
23 because, obviously, 60 to 90 days wasn't going to be  
24 enough if we had to go through the Hague Convention.

## Teleconference

Page 19

1                   So, I think if we put in a period of  
2           time to do just what Your Honor said, to prime the pump,  
3           so to speak, I do think that even just corresponding with  
4           these people will take a little longer than two weeks, so  
5           if we could have something in the order of 30 to 45 days,  
6           I think would probably be, you know, more realistic.

7                   SPECIAL MASTER POPPITI: Does anyone,  
8           and maybe the best way to approach this again, does  
9           anyone disagree with Mr. Grimm's characterization and the  
10          amount of time in which he thinks --

11                  MR. HALKOWSKI: Your Honor, as I  
12          indicated, I take strong exception to any further  
13          extensive delays, and I think it's important, when you  
14          think about this, to take a step back and realize exactly  
15          where we are. We have raised this issue, you know, for  
16          some time, I think over 18 months.

17                  SPECIAL MASTER POPPITI: It's almost two  
18          years.

19                  MR. HALKOWSKI: And we have pointed out,  
20          from whatever time, that we are licensed, our suppliers  
21          are licensed, and fully expecting to hear back from  
22          Honeywell a reasonable response along the lines of, Oh,  
23          gee, didn't realize that, we are happy to stipulate to a  
24          dismissal, even without prejudice, so if something turned

Teleconference

Page 20

1 up down the road that turned up as something is not  
2 covered, you know, we can deal with it.

3 We didn't get that.

4 And Honeywell didn't deem it important  
5 and certainly didn't, apparently, believe that there was  
6 any concern that any of these licences had been exceeded  
7 in scope or that there is anything else breached of the  
8 license, so they haven't, apparently, done the discovery,  
9 which now, all of a sudden, they want to do.

10 So, from our view, Honeywell has had  
11 almost two years to do this and they had, for whatever  
12 reason, they chose not to.

13 And, secondly, as I mentioned, another  
14 easy solution here is for Honeywell to say, Well, gee, we  
15 have licensed all these people, and some of them, we  
16 have, a lot of them have been part of this lawsuit and we  
17 dismissed them, some of them we never even bothered to  
18 bring into the lawsuit because, apparently, they believed  
19 the licenses are in effect and they are strolling along  
20 and none of the tasks have been exceeded, etcetera, and,  
21 so, there is no apparent reason on Honeywell's side to  
22 believe that the licenses are, as I say, have been  
23 breached or the limitations have been exceeded.

24 And, so, if that's the case, then it's

## Teleconference

Page 21

1 just, it's difficult to imagine that this is now an issue  
2 that all of a sudden requires attention, whereas, you  
3 know, it didn't before, No. 1, and, No. 2, like I said, a  
4 simple solution if they are concerned about, you know,  
5 getting a final resolution to this, is to just  
6 cooperatively agree to dismiss the customer defendants  
7 without prejudice, and if, down the road, it turns out  
8 that scopes have been exceeded for the licenses or  
9 whatever and they need to bring people back in, you know,  
10 whatever, happy day, have at it.

11 But I think, at this point, you know, we  
12 have got, the record is what it is, Honeywell has had  
13 plenty of opportunity to deal with this issue in some  
14 more cooperative way or in some other approach if they  
15 wanted to get discovery and figure out whether they  
16 needed to bring some of these module suppliers, who are  
17 supposedly licensed, if they really truly believed that  
18 they needed to bring some of them back into the suit  
19 because the licenses have been exceeded, they have had  
20 that opportunity.

21 And to now say, Hey, wait a minute, wait  
22 a minute, we have done all this stuff that we didn't  
23 know, we need to kind of basically tie this thing up, we  
24 start talking about the Hague convention and going into

Teleconference

Page 22

1           that kind of discovery, we could be here forever.

2                           MR. GRIMM: Can I respond to that?

3                           SPECIAL MASTER POPPITI: I understand  
4           that and certainly Mr. Grimm has identified that. My  
5           question is this with respect to your comments that  
6           Honeywell could have done certain things, and I will  
7           certainly want Honeywell to speak to this, but the  
8           observation that I have, and I am not telling you that,  
9           although I believe I have a fairly good handle, and I  
10          have been able to get my arms around, I believe, the  
11          process of this case up through when Judge Farnan was  
12          assigned the responsibility to try the case, it seems to  
13          me that the customer defendants asked for a complete stay  
14          of proceedings as it related to them, and it seems to me,  
15          and I know that I articulated some of this history in my  
16          findings and recommendations, that as of a certain date,  
17          once there were some conditions met, that, in fact, there  
18          was a complete stay of all proceeding as it related to  
19          the customer defendants.

20                          And I expect that that means that if  
21          Honeywell had an inclination, I am not sure why they  
22          would have had it, but if they had an inclination to want  
23          to conduct third-party discovery, for example, with  
24          respect to licenses that the customer defendants have,

Teleconference

Page 23

1 that there would have to have been a lift of the stay.

2 MR. GRIMM: Your Honor, there is one  
3 thing that maybe I didn't explain as well as I could  
4 have. What I meant to say was we are talking about  
5 third-party discovery.

6 SPECIAL MASTER POPPITI: Correct.

7 MR. HALKOWSKI: And then the third-party  
8 discovery we are talking about is discovery from the  
9 Honeywell's licensees.

10 SPECIAL MASTER POPPITI: Correct.

11 MR. HALKOWSKI: And these -- so if  
12 Honeywell -- this has nothing to do with whether or not  
13 there was a stay with regard to the customers. We are  
14 talking about whether or not Honeywell could have gotten  
15 discovery from Honeywell's licensees, the majority of  
16 whom were previously defendants in this case.

17 So the point is if Honeywell had an  
18 inkling that, Well, gee, we are not so sure that the  
19 licensees that we have made deals with are abiding by  
20 those terms and that there hasn't been some exceeding of  
21 the scope of some of those licensees and we might want to  
22 bring some of them back into this suit, that's why I am  
23 saying they have had that opportunity for some time.

24 And in addition to that, for over two

## Teleconference

Page 24

1 years, they have been, or nearly two years, I think it's  
2 only, whatever, between a year-and-a-half and two, but  
3 for all that time, they have additionally known of our  
4 concerns that we think we are all completely licensed up.

5 So, taken in combination, there  
6 certainly was no reason for them not to have pursued this  
7 if they had a legitimate concern or belief that there was  
8 some, you know, real possibility that these licenses have  
9 been exceeded in some way. And, as I say, so they could  
10 have done that with, just with regard to finding out  
11 whether or not the manufacturer, the suppliers, were  
12 exceeding their licenses and whether or not those  
13 manufacturers and suppliers should be brought back into  
14 this suit.

15 MR. GRIMM: Your Honor, this is  
16 completely irrelevant to the question we are talking  
17 about here, which is whether or not their licenses are  
18 covered. You put your finger right on it. We had no  
19 reason to address this issue because there was a complete  
20 stay of the case. It would have required a lifting of  
21 the stay.

22 And although Apple raised this issue two  
23 years ago, Judge Thyng said she was not going to address  
24 it at that time. She was not going to lift the stay.



## Teleconference

Page 25

1 She was not going to address the issue.

2 So to suggest that Honeywell should have  
3 then started taking discovery on the issue, I think, is  
4 slightly unfounded, unfair, and probably would have been  
5 met by objections from the customer defendants.

6 Even since April, when the issue, as was  
7 put on the table, we received no cooperation from anybody  
8 in getting any discovery, and it's only Your Honor's  
9 order that made it clear again that we are entitled to  
10 some limited discovery that we hope we will break that  
11 wall down. But to suggest that we should have done it  
12 earlier, I think, is just not right at all.

13 MR. HALKOWSKI: Your Honor, the issue on  
14 the stay is truly a red herring. This is actually  
15 nothing to do with the stay on discovery from customer  
16 defendants. I mean, that's one thing. But it's  
17 certainly, you know, third-party discovery, there is  
18 certainly no particular obstacle to pursuing that with  
19 regard to Honeywell's own licensees if they actually had  
20 a legitimate concern that, Gee, we had these licenses  
21 with these guys and we think maybe there is an issue that  
22 you guys have exceeded the scope of them somehow. And,  
23 you know, we have got this other issue with the customers  
24 that they say, They are all licensed up.

## Teleconference

Page 26

1                   SPECIAL MASTER POPPITI: Help me  
2           understand something. What you are saying is that some  
3           of them, not all of them, were in the case at various  
4           points in time because a number of them have been let out  
5           of the case over the course of time, those that were in  
6           the case at any particular time, Honeywell could have  
7           initiated discovery against them on this issue, you would  
8           not have to have been noticed, and you would not have  
9           been able to participate in any, for example, any  
10          depositions that would occur?

11                   MR. HALKOWSKI: As far as I understand,  
12          you know, the Federal Rules of Procedure, there may have  
13          been, you know, whatever the notice is that go into the  
14          Court to the depositions being taken and then these, you  
15          know, anybody that's a party to the suit would certainly  
16          be aware of that, but in terms of Honeywell pursuing  
17          third-party discovery, which is, again, the issue we are  
18          talking about, I don't know of any, like I said, any  
19          obstacle or anything that we, as customers, would have  
20          been able to say, Hey, wait a minute, discovery is stayed  
21          with regard to the customers, so you can't have discovery  
22          with regard to your licensee manufacturers.

23                   That's, like I said, it's a red herring.  
24          It's besides the point.

## Teleconference

Page 27

1 And, again, this is all just a point to  
2 be made that it's just interesting, if nothing else, that  
3 now, you know, Honeywell says, Well, wait a minute,  
4 before we let anybody go, we need to see whether some of  
5 these licenses have been exceeded in some way.

6 But, you know, they have had that  
7 opportunity and it's, you know, the issue has been out  
8 there, and if, like I said, as I said before, they had a  
9 legitimate concern about that, they certainly had an  
10 opportunity to pursue it before.

11 And at this point, I think, you know, we  
12 have got a record that it is what it is in terms of  
13 discovery, and, you know, we ought to move forward and  
14 get our briefing in and see where it leads.

15 SPECIAL MASTER POPPITI: Let me just  
16 shift focus for a moment. You said the record is what it  
17 is with respect to discovery.

18 Tell me what that record is in terms of  
19 what it is with respect to discovery from the customer  
20 defendant.

21 MR. HALKOWSKI: From the customer  
22 defendants, I believe it's fairly limited, and, again, I  
23 don't think there is, from our perspective, certainly,  
24 anything that we have that's of significant interest

## Teleconference

Page 28

1 other than the issue that we have been around a couple of  
2 times on it, and I think Your Honor has now addressed,  
3 and, that is, our identification of which manufacturers  
4 have supplied which modules with regard to the accused  
5 products.

6 And, so, you know, that issue is  
7 something that we have provided information on, and, you  
8 know, there is certain obligations that we have got in  
9 terms of having some sworn declarations, and I know there  
10 is some other issues with regards to some other  
11 discovery, so in terms of the customer defendants,  
12 that's, you know, that's really, you know, the key issues  
13 with regard to this licensing issue, and that's, you  
14 know, all that I am aware of with regard to discovery.

15 Now, this, again, that's, at least in my  
16 view, it appears to be a separate issue from the concern  
17 about information that might be within the hands of  
18 Honeywell's licensees LCD manufacturers and whether or  
19 not they have got information in their possession that  
20 shows that, you know, Gee, it turns out that we entered  
21 this license with you and we have now exceeded, you know,  
22 certain bounds of it, and, so, we ought to be back in the  
23 suit.

24 Now, whether that's out there or not, I

Teleconference

Page 29

1 don't know, but, again, I don't think that has anything  
2 to do with customer discovery.

3 SPECIAL MASTER POPPITI: What I'd like  
4 to do, and Mr. Grimm, you can outline the discovery that  
5 you propose for the customer defendants, you first  
6 mentioned it in the first full paragraph of page 2 of  
7 your August 18th letter.

8 MR. GRIMM: Yes, Your Honor. It seems  
9 like, you know, simple enough to us and it should be  
10 discoverable, it seems to us, that they provide us with  
11 any correspondence that they have had with their  
12 manufacturers on this issue. I think that could quickly  
13 dispose of it if the manufacturers make it clear that,  
14 yes, we believe that you are covered by this license, we  
15 intended to cover you by this license, and here is why,  
16 to the contrary, there could be, you know, correspondence  
17 that indicates just the opposite.

18 That's, you know, it's not privileged, I  
19 don't think. It seems like it should be equally  
20 discoverable and we think would facilitate and expedite  
21 any third-party discovery that we would need to get from  
22 the manufacturers.

23 The second component is whether or not  
24 they purchased, these customers, whether or not they

## Teleconference

Page 30

1 purchased a completed module from the manufacturing  
2 defendants because it's only completed modules that are  
3 licensed. And in this industry, it won't surprise Your  
4 Honor, that a lot of times one entity, a manufacturing  
5 defendant, will create the LCD screen.

6 SPECIAL MASTER POPPITI: Right.

7 MR. GRIMM: And that's the critical  
8 component. And then perhaps they then send it on to  
9 another company who puts, assembles the back light, which  
10 is a less critical component, and then that package deal  
11 is then sent on to one of these customer defendants.

12 If we could get information from the  
13 customer defendants on, you know, What state is the  
14 module in when you receive it?, Is it a fully complete  
15 module that's covered by these licenses or not?, that  
16 also would, obviously, facilitate and expedite whatever  
17 third-party discovery we had to get from the  
18 manufacturing defendants.

19 MR. HALKOWSKI: Your Honor, if I could  
20 speak to that issue.

21 SPECIAL MASTER POPPITI: Please.

22 MR. HALKOWSKI: It seems, from my  
23 perspective, I am looking this over, and, again, I have  
24 only looked this over briefly, but with regard to the

## Teleconference

Page 31

1 discovery that Honeywell is now seeking from the  
2 customers in this letter, it appears to be material that  
3 it's going to either come to light and be relied upon as  
4 a part of the upcoming motion, and if so, you know, it  
5 will be something that Honeywell might want to pursue or  
6 might want to get some further information on or have a  
7 file, you know, request for a deposition to maybe present  
8 some correspondence from X, Y, Z supplier, that may or  
9 may not happen.

10 I don't see that happening certainly for  
11 Apple because, from our perspective, this is all besides  
12 the point. It's hand waving. It might be interesting,  
13 but what's at issue is the licenses, the licenses and  
14 particular terms. They either cover what's going on or  
15 they don't. It's the licenses. It's not X, Y, Z  
16 corporation saying, You know what, I think you are  
17 covered by this license. That's certainly our view, and,  
18 you know, the customer saying, Oh, great, I am glad to  
19 hear that, we think we are covered, too. So what?

20 It's really the licenses. The licenses  
21 have terms and they either cover what's going on or they  
22 don't.

23 And, so, certainly --

24 MR. GRIMM: Can I speak to that, Your

## Teleconference

Page 32

1 Honor.

2 SPECIAL MASTER POPPITI: It's your  
3 position that it's Honeywell's burden to prove that the  
4 scope, the activity is beyond the scope of the license,  
5 and if I ultimately conclude that that is Honeywell's  
6 burden, shouldn't they have the opportunity to discover  
7 that information?

8 MR. HALKOWSKI: They should. And I  
9 think they have. I guess that was, you know, my point,  
10 that, yes, they have had, you know, like I said, as much  
11 time as they could have possibly wanted to pursue any of  
12 this discovery from the licensee manufacturers.

13 Now, again, it goes back on looking at  
14 the customers now, and with regard to the customers, I  
15 just, I can't imagine any of the customers having  
16 information in their possession that, you know, that's  
17 going to be particularly dispositive or helpful in terms  
18 of Honeywell being able to determine whether or not the  
19 terms of the licenses have been exceeded or not.

20 Whatever information and whether that  
21 exists or not is going to be in the possession of  
22 licensee manufacturers.

23 Frankly, it really comes down to one of  
24 the key issues is these sales caps, and some of the



## Teleconference

Page 33

1 licenses have sales caps, and we are not going to have  
2 that information, that's for sure. If anyone is going to  
3 have it, it's going to be the licensee manufacturers.

4 And, again, if Honeywell had an inkling  
5 that there was an issue there, they have had eons of time  
6 to pursue that, and that's our concern about, at this  
7 point, trying to tie things up and not further to allow  
8 them, you know, yet another delay in these proceedings.

9 Now, in terms of, like I said,  
10 specifically what it seems they are looking for from the  
11 customers, the correspondence, again, is, you know, I  
12 don't believe it's going to be relevant, I can't imagine  
13 that there is going to be anything there, but, and,  
14 again, I think it's besides the point, but, you know,  
15 frankly, the biggest concern that we have got is the  
16 additional delay that would be engendered by continuing  
17 to run down these various different rabbit holes, in our  
18 view.

19 MR. GRIMM: Can I speak? Do you want me  
20 to speak to any of that, Your Honor?

21 SPECIAL MASTER POPPITI: Yes, please.

22 MR. GRIMM: No. 1, going in reverse, I  
23 don't see any additional delay. We are just asking them  
24 to search their files for this correspondence and to tell

Teleconference

Page 34

1 us what state they received the module in.

2 All Mr. Halkowski says is, I don't think  
3 there will be anything there. Well, let's find out.

4 As Your Honor said, we are entitled to  
5 discovery either to carry our burden of proof or to rebut  
6 their burden. The notion that Honeywell has had the  
7 opportunity is, I hate to use the word, you know,  
8 ludicrous or ridiculous, but that's where we are heading  
9 here. We have had no opportunity to discover these  
10 issues. These issues were never on the table. Judge  
11 Thyng said they were not on the table.

12 Why would Honeywell take discovery of  
13 people it's already licensed, who have already  
14 capitulated to this patent to see if they have exceeded  
15 their caps. We have audit rights to do that.

16 The only reason to do it now is these  
17 customer defendants now want out of the case. We are not  
18 looking to double dip. We have had a tremendously  
19 successful licensing program. We were forced to go out  
20 to the manufacturing defendants first. The customer  
21 chose that. They got the stay that they wanted.

22 We are happy to let them out once there  
23 is a showing that they are entitled to be out, but as  
24 Your Honor knows, it's not crystal clear under these

## Teleconference

Page 35

1 licenses. The supplier licenses don't say, We are  
2 covering all the modules we sold to Apple.

3 If Mr. Halkowski is so sure that he is  
4 covered, then he can come forward with evidence of that.  
5 But we should have the opportunity to take the discovery  
6 now, that we have never had any reason to take, that we  
7 would have been met with an argument that was stayed  
8 because, as Your Honor pointed out, the customers would  
9 have wanted to be involved in that discovery, and,  
10 frankly, we had no reason to take that discovery. We are  
11 only taking it now to see whether or not these customers  
12 are licensed or not.

13 And, so, you know, Honeywell has taken  
14 it upon itself to go forward and try to take this  
15 discovery. We put out 30(b)(6) deposition notices the  
16 day after Your Honor's recent order. We sent out letters  
17 asking for the declarations that Your Honor suggested.  
18 We are prepared to proceed on the schedule that Your  
19 Honor set, but for the request that we have a little bit  
20 more time to prime the pump, as you say, to conduct  
21 third-party discovery, and we make this one simple  
22 suggestion with respect to the customers because we think  
23 that would facilitate all of it.

24 And, so, that's where we are. And, you

## Teleconference

Page 36

1 know, I think those are relatively simple issues and we  
2 ought to get on with it.

3 MR. HALKOWSKI: Your Honor, just to be  
4 clear, it's not, I don't have a huge problem with narrow,  
5 you know, particular requests that don't result in  
6 additional delay. I mean, that's really our concern.

7 I mean, we are happy to, you know,  
8 provide some limited, you know, kind of focused  
9 information as opposed to the, kind of the broadside that  
10 we initially got from Honeywell a few weeks ago. So  
11 that's point one.

12 Point two, again, I will just point out  
13 that Honeywell, it is really either the licensee  
14 manufacturers, you know, should be back in the suit and  
15 Apple should not be out because it's the scope of the  
16 license had been exceeded or the scope of the licenses  
17 have not been exceeded and there is no reason to bring  
18 back in the licensee manufacturers and there is no reason  
19 for Apple to be in this suit. It's kind of you are  
20 either both in or both out.

21 And what my point has been is that for,  
22 you know, a year-and-a-half or two years, Honeywell has  
23 not deemed it of any concern that these other -- that  
24 Apple's manufacturers exceeded their licenses, and, so,

## Teleconference

Page 37

1       they haven't pursued discovery from them saying, you  
2       know, We think maybe we might need to bring you back in  
3       the suit because we think you exceeded the scope of this  
4       and that's why we can't let Apple out of this suit and  
5       that's why you need to come back in, they have had that  
6       opportunity and they just simply haven't pursued that.

7                       That's what our bigger concern is that  
8       they, you know, they now kind of throw a monkey wrench  
9       into this process that we finally thought we had started  
10      on the right track in terms of getting an opportunity to  
11      brief it to Your Honor.

12                    SPECIAL MASTER POPPITI: We are on a  
13      track, I can assure you that. I do want to hear from any  
14      other customer defendant if they want to speak.

15                    MR. DI GIOVANNI: Your Honor, my one  
16      concern that hasn't been addressed is the scope of  
17      discovery, and some of the things I have heard today from  
18      Honeywell makes me a little bit concerned. For example,  
19      they mentioned taking document discovery or other  
20      discovery of the communications between the manufacturers  
21      and customer defendants. I think that would go beyond  
22      the scope of what I would have anticipated and what I  
23      would consider reasonable. And, I actually don't agree  
24      with Honeywell that, in fact, such documents would not be

Teleconference

Page 38

1 privileged. I think there would be a privilege, in most  
2 instances, a common legal interest privilege.

3 So that just makes me a bit concerned  
4 that the discovery that we are talking about here, that  
5 at least Honeywell is going to seek, is going to be far  
6 beyond what is called for in this circumstance.

7 SPECIAL MASTER POPPITI: The  
8 limitations, as I understand it, and, Mr. Grimm, correct  
9 me if I am wrong, if you kind of draw a box, forget  
10 third-party for a moment, around the first full paragraph  
11 of page 2 and its last full sentence, that's what I am  
12 focused on, and that's what, Mr. Grimm, I expect you  
13 wanted me to focus on?

14 MR. GRIMM: Correct, Your Honor.

15 SPECIAL MASTER POPPITI: With respect  
16 to, quote/unquote, limited discovery.

17 So, let me just make this observation.  
18 No. 1, I think it's important to toll the time within  
19 which to take exceptions to my findings and  
20 recommendations so that everyone can, in a sense, stand  
21 down from the need to focus on that activity.

22 No. 2, I will be getting out today a  
23 letter, which I may now have to modify, although I don't  
24 think I do, with respect to the work we are doing today,

## Teleconference

Page 39

1       that will focus all parties on what I think is going to  
2       be important for me to have before the hearing scheduled  
3       for September 4 and in anticipation of my recommendation  
4       to Judge Farnan as to how the case should be configured  
5       going forward to trial/trials, or going forward to  
6       disposition of pending motions for summary judgment, for  
7       example, of Citizen.

8                       With all of that in mind, what makes  
9       some sense to me is to say to you, between now and the  
10      4th, I'd like you to take a step at trying to, not trying  
11      to, meeting and conferring and coming to some four-corner  
12      resolution on at least what the discovery should be from  
13      the customer defendants.

14                     I think that makes the most sense in  
15      terms of the time frames coming up.

16                     I realize that that may have some impact  
17      on the briefing schedule, and, quite frankly, I don't  
18      have a mirror image of it in my mind to see what that  
19      would do with it, but I think that if it does, I will  
20      take a look at it during the course of the day today and  
21      we will accommodate in terms of what it should look like  
22      after you all say to me, We are in agreement this is what  
23      should be occurring.

24                     If a shorter time frame makes some sense

## Teleconference

Page 40

1 to keep on track with the briefing schedule, I am happy  
2 to say, Meet and confer between now and the end of the  
3 week, come up with what is the limited discovery as  
4 proposed by Mr. Grimm in the August 18th letter to me,  
5 and then we just simply move forward on the same  
6 schedule.

7 On the issue of third-party discovery, I  
8 have made it a practice of my professional life not to  
9 try to look over my shoulder to try and second guess what  
10 a Court of Appeals would or would not do with any order  
11 that I enter. And I am not intending to suggest that I  
12 am doing that today.

13 However, I would not want to, and I  
14 don't think the parties would want to be in the position  
15 of having to argue, not to Judge Farnan but to the  
16 Circuit, that because of the way this case was configured  
17 moving forward, that there would be some determination  
18 that the parties did not have a full and fair  
19 opportunity, within the framework of how this case was  
20 structured, to conduct discovery without having gone back  
21 and forth to the Court for applications to lift stay and  
22 applications for leave to do other things.

23 I don't think anyone wants to be in that  
24 kind of position. I think the customer defendants want



## Teleconference

Page 41

1 out. My sense is that Honeywell would want the, needs  
2 information to either agree to let them out or needs  
3 information to help permit them to respond to any motions  
4 to dismiss.

5 I believe that there needs to be a time  
6 frame within which to secure third-party cooperation  
7 and/or third-party discovery. I am hoping it is not the  
8 latter. If it's the latter, I am not sure where we are  
9 in terms of time frame.

10 So, I would like you, within the context  
11 of those meet and confers, to also reach agreement, and  
12 if you don't, I will make some determination with respect  
13 to the time frame within which to prime the pump with the  
14 third parties.

15 I know you have already tried to do  
16 that. I know that some dialogue is occurring but I'd  
17 like there to be one last shot at it and I'd like a time  
18 certain to see that accomplished within.

19 MR. GRIMM: Very well, Your Honor.

20 Thank you.

21 SPECIAL MASTER POPPITI: If the 4th  
22 makes sense, let's say the 4th, and I will write an  
23 appropriate document which tolls the time within which to  
24 file exceptions, if you think it can be done before the

Teleconference

Page 42

1 4th, then please someone suggest to me a different and  
2 earlier date.

3 MR. GRIMM: Can you clarify what you  
4 mean by what would be on the 4th?

5 SPECIAL MASTER POPPITI: Well, on the  
6 4th, there is either going to be, you are all going to be  
7 telling me that there is full resolution to the issues  
8 that have been raised with respect to discovery, or you  
9 are going to be telling me you haven't reached resolution  
10 and I am going to be telling you what the road signs are  
11 going to look like going forward.

12 And if you can do it beforehand and you  
13 want to set a different date and have a brief  
14 teleconference so we keep everybody moving on the  
15 schedule that I have already set, then I am happy to do  
16 that as well.

17 MR. GRIMM: I certainly think it would  
18 be helpful to do it much earlier than that.

19 MR. HALKOWSKI: I agree.

20 MR. GRIMM: So we would be prepared to  
21 wrap up the meet and confer process by the end of this  
22 week, as you suggested earlier.

23 SPECIAL MASTER POPPITI: Is there any  
24 disagreement from any of the customer defendants?

## Teleconference

Page 43

1 MR. HALKOWSKI: That is certainly better  
2 from our perspective as well. I do have a question that  
3 is contemplated for the in-person hearing on the 4th,  
4 primarily because I am going to be in trial on that day  
5 and I am uncertain as to whether that hearing is more  
6 focused on the case in general or is it more focused on  
7 what we have been talking about with Your Honor, the  
8 various licensing issues?

9 SPECIAL MASTER POPPITI: It is more  
10 focused on the case in general because I certainly  
11 anticipated that the licensing/exhaustion issues were, if  
12 you will, covered by the findings and recommendations.  
13 Clearly, there needs to be some fine tuning to that. But  
14 it will be focused on the case in general.

15 MR. HALKOWSKI: Is it, I guess,  
16 necessary, from Your Honor's perspective, to have the  
17 full participation of the customer defendants, then, for  
18 the hearing on the 4th?

19 SPECIAL MASTER POPPITI: I think that if  
20 we establish a different date going forward, if you are  
21 going to finish meet and conferring by the 22nd, we may  
22 want to schedule a very brief teleconference on the 25th,  
23 for example. I am not sure that I would see the need for  
24 customer defendants to be participating, but I am

Teleconference

Page 44

1 certainly not going to suggest that they can't or  
2 shouldn't.

3 MR. HALKOWSKI: Okay. Thank you for  
4 that clarification. I guess we will get to work on the  
5 meet and confer and get a report to you by Friday.

6 SPECIAL MASTER POPPITI: And what time  
7 on Monday, the 25th, if you are going to be getting  
8 something to me on Friday?

9 MR. GRIMM: I would suggest sometime  
10 early afternoon just for anybody who may be in a  
11 different time zone.

12 SPECIAL MASTER POPPITI: Yes. That  
13 makes sense.

14 MR. HALKOWSKI: Do you want to say 1:00  
15 or 1:30?

16 SPECIAL MASTER POPPITI: Let's do this,  
17 because if you are going to be sending something to me  
18 that is other than a resolution on the 22nd, I am  
19 actually going to be leaving the office on the 22nd  
20 around 3:00, so if it comes in after that, I am not going  
21 to get to look at it -- well, let's do 2:00 on the 25th.

22 MR. HORWITZ: Your Honor, I hesitate to  
23 throw a monkey wrench into what you have just discussed,  
24 but I don't know whether people who would like to

## Teleconference

Page 45

1 participate in these meet and confers are around,  
2 especially now, given the time of year that we are in,  
3 and I wonder whether it would be more prudent to have  
4 Monday as the deadline so that if some people are away,  
5 we will at least be able to have some communications and  
6 have people back in the office for one day to submit  
7 something to you and then have a follow-up call the next  
8 day.

9 MR. HALKOWSKI: Apple doesn't have any  
10 objection to that.

11 MR. GRIMM: Honeywell does not either.

12 SPECIAL MASTER POPPITI: All right. If  
13 there is no disagreement with that, we can just move the  
14 2:00 on the 25th to 2:00 on the 26th.

15 MR. GRIMM: Your Honor, do you want to  
16 set a deadline on the 25th at 3:00 p.m.?

17 SPECIAL MASTER POPPITI: That would be  
18 great.

19 MR. GRIMM: Okay. Your Honor, will we  
20 keep the September 4th hearing in place just in case we  
21 need it?

22 SPECIAL MASTER POPPITI: Yes. The  
23 September 4th hearing will be going forward in any event,  
24 and if it's important, once you see my letter, because

## Teleconference

Page 46

1 the draft of the letter essentially says that the 24th  
2 will be focused on things other than those that were  
3 addressed in the report and recommendation that I have  
4 issued, if it's important to say, We need to also revisit  
5 some things with respect to that, then just simply  
6 advise.

7 And I think, in light of what we have  
8 all said, and even Mr. Grimm, your suggestion that  
9 perhaps there may be some things left over for the 4th, I  
10 am going to suggest to you all, and just let me know if  
11 anyone disagrees, that the -- I am wondering whether I  
12 should suspend the time within which to take exceptions  
13 to the report and recommendation until the 5th.

14 I realize that that may not make any  
15 darn sense because we are chugging along on the schedule.  
16 Does anyone have a view as to when you think it would be  
17 important to set that deadline? And I will accept  
18 anything from you that makes sense.

19 MR. GRIMM: I would think a deadline  
20 that coincides with the date on which Your Honor decides  
21 the motions to dismiss.

22 MR. HALKOWSKI: Your Honor, I wouldn't  
23 have an issue with that if we were basically sticking  
24 with our original schedule on the briefing, but if we are

## Teleconference

Page 47

1 not going to be sticking with that and if there is,  
2 indeed, going to be an extensive delay, for whatever  
3 reason, third-party or Hague Convention or whatever you  
4 want to talk about, but if there is going to be an  
5 extensive delay, then I see no reason why we shouldn't at  
6 least try to get this burden of proof issue through the  
7 hopper with Judge Farnan as soon as possible.

8 If, on the other hand, we are going to  
9 be able to stick to a briefing schedule that is along the  
10 lines that we had previously set forth and with the  
11 hearing in October, I mean, that's a different story.  
12 So, from my perspective, it entirely depends upon how far  
13 out we are going to end up going for --

14 SPECIAL MASTER POPPITI: Let's do this.  
15 Let's review the date on the, we can talk about the date  
16 again on the 26th because that will give me and that will  
17 give everyone a sense as to where we are with respect to  
18 hopefully your agreement on most if not everything, and  
19 that would include any tweaking of the briefing schedule  
20 that I have already issued. So I will draft an  
21 appropriate order which simply tolls the time within  
22 which to file something under the Rule without setting a  
23 new date yet.

24 MR. GRIMM: That's fine, Your Honor.

Teleconference

Page 48

1 MR. HALKOWSKI: That makes sense from  
2 Apple's perspective, Your Honor.

3 SPECIAL MASTER POPPITI: All right.  
4 Thank you everyone for participating, and I look forward  
5 to seeing an agreement; if not, look forward to working  
6 with you on the 26th at 2:00.

7 MR. GRIMM: Thank you, Your Honor, for  
8 scheduling this on such short notice. We very much  
9 appreciate it.

10 MR. HALKOWSKI: Thank you, Your Honor.

11 SPECIAL MASTER POPPITI: Bye, now.

12 (The hearing was concluded at  
13 10:38 a.m.)

14

15

16

17

18

19

20

21

22

23

24



Teleconference

Page 49

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

C E R T I F I C A T E

STATE OF DELAWARE:  
:  
NEW CASTLE COUNTY:

I, Renee A. Meyers, a Registered Professional Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing teleconference was taken before me, pursuant to notice, at the time and place indicated; that the teleconference was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the foregoing teleconference is a true record; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand this 20th day of August A.D.  
2008.

*Renee A. Meyers*

RENEE A. MEYERS  
REGISTERED PROFESSIONAL REPORTER  
CERTIFICATION NO. 106-RPR  
(Expires January 31, 2011)

